Connecticut State Medical Society
FOUNDED IN 1792
160 St. Ronan Street, New Haven, CT 06511-2390 (203) 865-0587 FAX (203) 865-4997

Connecticut State Medical Society Testimony in Opposition to House Bill 5537 An Act Concerning Certificates of Merit
Judiciary Committee
March 24, 2010

Senator MacDonald, Representative Lawlor and Members of the Judiciary Committee, on behalf of the more than 7,000 members of the Connecticut State Medical Society (CSMS) thank you for the opportunity to present this testimony to you today in opposition to House Bill 5537 Ac Act Concerning Certificates of Merit. This bill undercuts and eviscerated a delicate compromise enacted by the legislature as part of a two year review of medical liability reform in 2004/2005. This proposed legislation undoes the compromise and would be a significant step backwards in addressing concerns regarding medical liability.

Language contained CGS 52-190a establishes comprehensive yet appropriate standards for Certificates of Merits. This language has proven to be effective and beneficial to the filing and adjudication of civil medical liability claims. Unfortunately, as outlined in our concerns below, the changes before you today erase those standards and lower thresholds and requirements. In specific:

1. Section 2, paragraph (a) changes the standard for a certificate of merit from a "detailed basis for the formation of such opinion" to "one or more specific breaches of the prevailing professional standard of care." This appears to be a lowering in the standard for certificates of merit. To require only one specific breach to be alleged without providing the detailed basis for that breach would lower the standard of the content for such letters.

2. Section 2, paragraph (a) eliminates the necessity for a letter in an informed consent case. Allegations of a breach of the duty of informed consent are inherently malpractice allegations and should be subject to certificate of need requirements. To eliminate the necessity of a certificate of merit for cases involving informed consent would reverse the holdings of several Superior court cases, including one case presently pending before the Connecticut Supreme Court. (Shortell v. Cavanaugh, S.C. 18469).

3. Section 2, paragraph (a) provides that challenges to the qualifications of the writer of the certificate of merit shall be made only after discovery. This represents a significant change in existing practice. Under current practice, for example, if an alleged malpractice involves a neurosurgeon, but the certificate of merit is signed by an orthopedist, the challenge to the qualifications of this signer can be made at the outset of the case. Under this legislation, by requiring the completion of discovery **before** such challenge to a clearly unqualified writer of the certificate represents an undue burden on the physician defendant.

4. Section 2, paragraph (c) substitutes the word "may" for "shall" when referring to the dismissal of a case for failure to file a proper certificate of merit. This would render the opinion letter requirement virtually meaningless in a large number of cases. Further, the

automatic granting of an additional 30 days for failure to obtain and file such a certificate essentially gives the plaintiff two bites at the apple.

5. Lastly, there are changes to this legislation which expand the definition of similar health care provider to allow to be determined by the court for letter for certificate of merit purposes. This could create the potential for additional litigation at the very outset of the case and, as such, place additional burdens on the physician defendant.

Thank you for the opportunity to present this testimony to you today. Please oppose, HB 5537.